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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2012-0038]

RIN 0579-AD79

Importation of Cape Gooseberry From Colombia Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of cape gooseberry from Colombia into the United States. As a condition of entry, cape gooseberry from Colombia would be subject to a systems approach that would include requirements for establishment of pest-free places of production and the labeling of boxes prior to shipping. The cape gooseberry would also have to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia certifying that the fruit has been produced in accordance with the systems approach. This action would allow for the importation of cape gooseberry from Colombia into the United States while continuing to provide protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0038-0001>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2012-0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0038> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-59, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Cape gooseberry (*Physalis peruviana*) from Colombia is authorized for importation into the United States if the commodity is treated with a cold treatment for Mediterranean fruit fly

(Ceratitis capitata or Medfly). The national plant protection organization (NPPO) of Colombia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow commercial consignments of cape gooseberry fruit from production sites recognized as free of Medfly in the Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca without cold treatment.

In response to the request of the NPPO of Colombia, we prepared a commodity import evaluation document (CIED) titled “Recognition of cape gooseberry production sites that are free of Mediterranean fruit fly within a low prevalence area in Colombia Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.” The CIED may be viewed on the Regulations.gov Web site or in our reading room (see ADDRESSES above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Based on the evidence presented in the CIED, we have determined that cape gooseberry can be safely imported from Colombia into the United States without cold treatment if they are produced in accordance with a systems approach. We are proposing to add the systems approach outlined below to the regulations in a new § 319.56-60 governing the importation of cape gooseberry from Colombia.

Proposed Systems Approach

General Requirements

Paragraph (a) of proposed § 319.56-60 would require the NPPO of Colombia to provide a bilateral workplan to APHIS that details the activities the NPPO will carry out to meet the

requirements of the systems approach, subject to APHIS' approval of the workplan. APHIS would be directly involved with the NPPO in monitoring and auditing implementation of the systems approach. A bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations regarding a specific commodity. Bilateral workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Bilateral workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires a bilateral workplan to be developed.

Places of Production Requirements

Paragraph (b)(1) of proposed § 319.56-60 would specify that all places of production be registered with the NPPO of Colombia. Under paragraph (b)(2) of proposed § 319.56-60, all places of production would have to be located within the C. capitata low prevalence area of the Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca. APHIS has reviewed and approved the methods used by the NPPO of Colombia to survey for low pest prevalence and to recognize specific places of production as free of Medfly in the specified areas. Pest-free places of production within certified low pest prevalence areas have been effectively used in the past as an element of a systems approach to allow fruits to be safely imported into the United States, and we believe this measure can be successfully applied to the importation of cape gooseberry from Colombia.

Mitigation Measures for Medfly

Only one fruit fly has been trapped in the low prevalence area in Bogota Savannah and the neighboring municipalities above 2,200 meters since 1993. Therefore, we propose using trapping to monitor the places of production within the low prevalence area described above as an element of the systems approach to mitigate the risk posed by Medfly.

In paragraph (c)(1) of proposed § 319.56-60, we would require the NPPO of Colombia to place fruit fly traps at intervals specified in the bilateral work plan to demonstrate place of production freedom from Medfly. The NPPO of Colombia would have to keep records of fruit fly detections for each trap and make the records available to APHIS upon request.

Paragraph (c)(2) would specify that the trapping of any Medfly would have to be reported to APHIS immediately. Capture of C. capitata would result in immediate cancellation of exports from farms within 5 square kilometers (km²) of the detection site. An additional 50 traps would have to be placed in the 5 km² area surrounding the detection site. If a second detection is made within that 5 km² area within 30 days of the first, eradication using a bait spray agreed upon by APHIS and the NPPO of Colombia would have to be initiated in the detection area and treatment would have to continue for at least 2 months. Exports could resume from the detection area when APHIS and the NPPO of Colombia agree the risk has been mitigated. These requirements would ensure that production sites are monitored, that no fruit is shipped from sites where Medfly has been detected, and that the presence of Medfly is addressed quickly and definitively.

Post-Harvest Procedures

Under paragraph (d) of proposed § 319.56-60, the cape gooseberries would have to be packed in boxes marked with the identity of the originating farm. This measure would allow shipments of the fruit to be traced back to the farm in the event of the discovery of a pest. The

boxes containing cape gooseberries would have to be packed in sealed and closed containers before being shipped in order to prevent harvested fruit from being infested by quarantine pests.

Phytosanitary Inspection

Paragraph (e) would state that, after the commodity is packed, the NPPO of Colombia must visually inspect a biometric sample of cape gooseberry at a rate jointly approved by APHIS and the NPPO of Colombia and cut open the fruit to detect C. capitata. External and internal inspection of a sample would ensure that pests at various life stages are detected.

Commercial Consignments

Paragraph (f) would state that only commercial consignments of cape gooseberry would be allowed to be imported. Commercial consignments, as defined in § 319.56-2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

Phytosanitary Certificate

Paragraph (g) would set out the requirement for a phytosanitary certificate. Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Colombia, providing an additional declaration stating that the fruit in the consignment was produced in accordance with the requirements in proposed § 319.56-60. This requirement

would provide for the Colombian NPPO's confirmation that the provisions of the regulations have been met.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is proposing to amend the current regulations to allow the entry of fresh cape gooseberry from Colombia under a systems approach. Since 2003, Colombia has been allowed to export fresh cape gooseberry to the United States under a cold treatment protocol to prevent the entry of Medfly. The systems approach would permit cape gooseberry imports without cold treatment from production sites recognized as free of Medfly. In 2011, only about 0.2 percent (14 metric tons) of Colombia's fresh cape gooseberry exports were shipped to the United States, valued at about \$90,300.

The United States does not produce cape gooseberry commercially. Small entities that may benefit from increased imports of fresh cape gooseberry from Colombia would be importers, wholesalers, and other merchants who sell this fruit. While these industries are primarily comprised of small entities, APHIS expects any impacts of the proposed rule for these businesses to be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow cape gooseberry to be imported into the United States from Colombia. If this proposed rule is adopted, State and local laws and regulations regarding cape gooseberry imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2012-0038. Please send a copy of your comments to: (1) Docket No. APHIS-2012-0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A

comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation of cape gooseberry from Colombia into the United States. As a condition of entry, cape gooseberry from Colombia would be subject to a systems approach that will require information collection activities including a bilateral workplan, registration of places of production, box marking, trapping and records, and a phytosanitary certificate.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1651 hours per response.

Respondents: NPPO of Colombia, producers, and exporters.

Estimated annual number of respondents: 427.

Estimated annual number of responses per respondent: 11.

Estimated annual number of responses: 4,626.

Estimated total annual burden on respondents: 767 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-60 is added to read as follows:

§ 319.56-60 Cape gooseberry from Colombia.

Cape gooseberry (Physalis peruviana) may be imported into the United States from Colombia in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of Ceratitis capitata.

(a) General requirements. The national plant protection organization (NPPO) of Colombia must provide a bilateral workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(b) Place of production requirements. (1) All places of production must be registered with the NPPO of Colombia.

(2) All places of production must be located within the C. capitata low prevalence area of the Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.

(c) Mitigation measures for C. capitata. (1) Trapping for C. capitata must be conducted in the places of production in accordance with the bilateral workplan to demonstrate that those places are free of C. capitata. Specific trapping requirements must be included in the bilateral workplan. The NPPO of Colombia must keep records of fruit fly detections for each trap and make the records available to APHIS upon request.

(2) All fruit flies trapped must be reported to APHIS immediately. Capture of C. capitata will result in immediate cancellation of exports from farms within 5 square kilometers of the detection site. An additional 50 traps must be placed in the 5 square kilometer area surrounding the detection site. If a second detection is made within the detection areas within 30 days of a

previous capture, eradication using a bait spray agreed upon by APHIS and the NPPO of Colombia must be initiated in the detection area. Treatment must continue for at least 2 months. Exports may resume from the detection area when APHIS and the NPPO of Colombia agree the risk has been mitigated.

(d) Post-harvest procedures. The cape gooseberry must be packed in boxes marked with the identity of the originating farm. The boxes must be packed in sealed and closed containers before being shipped.

(e) Phytosanitary inspection. After packing, the NPPO of Colombia must visually inspect a biometric sample of cape gooseberry at a rate jointly approved by APHIS and the NPPO of Colombia, and cut open the sampled fruit to detect C. capitata.

(f) Commercial consignments. The cape gooseberry must be imported in commercial consignments only.

(g) Phytosanitary certificate. Each consignment of cape gooseberry must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia containing an additional declaration stating that the fruit originated from a place of production free of C. capitata within the low prevalence area of Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca and was produced in accordance with the requirements of § 319.56-60.

Done in Washington, DC, this 12th day of August 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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